

Appeal from decision of California State Office, Bureau of Land Management, declaring placer mining claims abandoned and void. CA MC 79983 and CA MC 79984.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2, in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

The filing with BLM prior to Oct. 21, 1976, of a copy of the notice of the location of an unpatented mining claim, pursuant to the Mining Claims Rights Restoration Act, 30 U.S.C. § 623 (1976), does not relieve the owner of the claim of the filing obligation imposed by sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and its implementing regulations.

APPEARANCES: Don E. Robinson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Don E. Robinson has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated January 15, 1981, declaring the Four Star-S Mine and Locumbar Mine placer mining claims, CA MC 79983 and CA MC 79984, abandoned and void for failure to file timely copies of notices of location pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833. Appellant's mining claims were located on February 14, 1975. The record contains copies of the notices of location, date stamped January 8, 1981, by BLM. The filing deadline was October 22, 1979.

In his statement of reasons for appeal, appellant contends that he originally filed on February 14, 1975, "under Public Law 359" (section 4 of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 623 (1976)). Appellant submits letters from Walter F. Holmes, Chief, Branch of Lands and Minerals Operations, BLM, dated April 29, 1975, acknowledging receipt of the notices of location for the subject mining claims and assigning the claims serial numbers CA 2742 and CA 2744. Pursuant to a request by appellant dated March 21, 1979, BLM acknowledged receipt of evidence of annual assessment work, received March 23, 1979, for the subject mining claims, serial numbers CA 2742 and CA 2744. Appellant states that he discovered that the claims were "missing" from BLM files when researching a potential prospecting area in the BLM office and was told to refile "in order to get the claims rejected, so that I could ask for a hearing."

[1] Section 314(b) of FLPMA, supra, requires the owner of an unpatented mining claim located prior to October 21, 1976, to file "within the three-year period following October 21, 1976 * * * a copy of the official record of the notice of location or certificate of location." The deadline for filing was October 22, 1979. See 43 CFR 3833.1-2(a). Failure to file on or before that date must result in the mining claim being declared abandoned and void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a); see, e.g., Sidney Hodges, 55 IBLA 17 (1981).

[2] Appellant's prior filing does not relieve him of the obligation imposed by section 314(b) of FLPMA, supra, and its implementing regulations. Al Sherman, 38 IBLA 300 (1978). Section 314(b) of FLPMA, supra, specifically provides that the filing of a copy of a notice of location shall be "within the three-year period following October 21, 1976." (Emphasis added.) Appellant's notices of location were plainly not filed within that 3-year period.

As there is no evidence that appellant filed copies of his notices of location within the required 3-year period, his claims were properly declared abandoned and void. In enacting the filing requirements of FLPMA, supra, Congress did not invest the Secretary of the Interior with

authority either to waive or excuse compliance with the statute or to afford mining claimants any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

